

REMARKS

In the August 11, 2004, office action, the Examiner objected to the disclosure, the abstract and the claims citing several typographical and spelling errors. Applicant apologizes to the Examiner for such careless errors and thanks the Examiner for pointing out such mistakes. Applicant has made appropriate correction of the disclosure, the abstract and the claims. Applicant has also renumbered the claims consistent with the Examiner, accordingly, Claims 1 through 39 are pending in this application.

On the merits, the Examiner rejected Claims 1, 2, 7, 8, 13-15, 17 and 21-23 under 35 U.S.C. § 102(b) as being anticipated by Dersch (U.S. 564,976). The Examiner rejected Claims 3, 5, 9, 18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Dersch in view of Nankivell (U.S. 3,712,024). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dersch. Claims 38 and 39 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dersch.

Claims 4, 6, 11, 12, 16, 19, 24 and 25 were objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitation of the base claim and any intervening claims. Claims 26 through 37 were allowed.

The Applicant regards his invention as a novel progressive flex headplate assembly and saddle tree constructed therewith in which the headplate assembly can fit different sized horses, with the center portion of the headplate *resting on the horse*, and *allowing the points of the saddle tree to lie parallel to the withers regardless of the width of the horse* for a proper saddle fit. The headplate assembly comprises a spring element, i.e. an elastic device that covers or regains its original shape after being flexed, extended or compressed, as conventionally defined. As such, the headplate assembly is constructed of a plurality of layers of flexible, *resilient* material, such as nylon or another flexible, resilient plastic or metal material *exhibiting a memory* upon flexure and release. The layers are arranged from the shortest (at the top of the headplate assembly) to the longest (at the bottom of the headplate assembly), similar to the design of a mechanical leaf spring. At the midpoint of the plurality of layers is a rigid segment used to secure the assembly together – however, the legs of each layer are unsecured, permitting each layer to move independently from the other layers.

Importantly, the headplate assembly functions as a spring element – with each leg of the headplate assembly being flexible such that it can accommodate horses having withers of differing widths. However, in combination with the headplate centerpiece, the flexible legs/points of the headplate assembly also are provided with variable resistance in response to flexure of the legs – a memory function, or alternatively phrased, an elastic or spring function which causes the layers to attempt to return to their original shape (the

shape under which there is no flexure or force applied to the layers). As constructed, the legs are permitted to progressively flex, with the flexing capability increasing (and resistance decreasing) down the length of each leg -- with maximum flexure (and minimum resistance) occurring near the points of each leg. Also important, and as a result of this configuration/construction of the layers, the points of the headplate assembly remain parallel to the horse's withers, and do not rub against, abut or contact the sides/muscles of the horse, in accordance with the proper fit of a saddle.

Dersch discloses a harness device for placement on a driving horse that is substantially different from the present invention. In particular, the harness is constructed of two layers of leather – a top, longer layer and a bottom, shorter layer. The top, center portion of the harness is stiff or rigid. There can also be a long metal stiffener located at the top, center portion of the leather layers to enhance stiffness. Importantly, as with other types of driving harnesses, the highest portion of the harness does not contact the horse, and therefore, the ends of both layers of the harness must contact the horse's body and, therefore, bear the weight of the harness in order to support the harness on the horse (Col. 1, lines 41-45). The leather layers are permanently sewn together along each of the forward and rear edges of the harness, and the stitching on each side extends the full length of the shorter of the two leather layers, see Figure.

Critically, the Dersch invention must include layers that are arranged such that the longest layer is at the top of the harness and the shortest layer is at the bottom. In

particular, because the layers are constructed of leather, the longer and thus, heavier, layer must be at the top of the harness. If it were not, the ends of the legs would not be forced against the horse to support the weight of the harness. Accordingly, the leather layers must be arranged in this manner in order to provide for the "close yielding fit" required by the patent. This is underscored by the requirement that the ends of each layer be reduced in thickness – in order to ensure the ends contact and are forced against the horse. Indeed, the Dersch patent states that if more layers are used, they also must be arranged in successively increasing length from the top to the bottom of the harness. Col. 1, lines 35-41. If the harness had layers that were arranged in any other fashion, the ends of the shortest layers of the harness would contact not the horse, and the harness would not stay properly positioned on the horse.

Rejection of Claims 1, 2, 7, 8, 13-15, 17, 21-23, 38 and 39

Claims 1, 2, 7, 8, 13-15, 17, 21-23, 38 and 39 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dersch.

First, and unlike Claim 1, because the Dersch layers are constructed of leather, the harness exhibits no spring or memory function and cannot be said to be a spring element. It is only the very ends of the leather layers in Dersch that are pliable to fit the back of any horse, with the weight of the heavy top layers causing the harness to be close fitting. However, this construction does not cause the leather to act or function as a spring

element. These leather layers are not elastic in nature, do not exhibit a memory function, and thus, do not return to an original shape; rather, it is the arrangement of the longer, heavier layer on the top of the harness that causes the ends to contact the horse and thus, causes the harness stay positioned on the horse. Thus, it is asserted that Dersch does not teach, describe or claim a spring element. Since this element is entirely absent from the Dersch reference, it is asserted that Claims 1 and 38 and all claims depending therefrom are not anticipated by Dersch.

In addition, Dersch does not disclose, teach or claim a device in which the end portions or legs exhibit both progressive flexibility or resilience in response to flexure of the legs. Unlike Dersch, in the Applicant's construction, the legs are permitted to progressively flex, defined in the specification as a flexing capability increasing (and resistance decreasing) down the length of each leg -- with maximum flexure (and minimum resistance) occurring near the points of each leg. In combination with the Applicant's headplate centerpiece (which is much shorter in length than the stiffener of Dersch), the flexible legs/points of the headplate assembly also are provided with variable resistance in response to flexure of the legs.

In Dersch, due to the stiffening of the leather and/or the long metal stiffener, a significant portion of each leg of the harness does not exhibit any progressive flexibility or resistance. More specifically, only the very ends of the leather layers are sufficiently pliable to fit onto the back of any horse; however, because the leather layers do exhibit

elasticity, a memory function or behave as a spring element, there is no resistance in response to flexure, as defined in the Applicant's specification. Indeed, the leather layers are merely pliable/flexible, but they are not resilient. As such, there is no resistance function built into the Dersch harness. Accordingly, Dersch does not include legs (or end portions of a spring element) that exhibit both progressive flexibility and resilience in response to flexure of the legs. Applicant asserts that Claims 1, 7, 17, 38 and 39 are not anticipated or made obvious by the Dersch reference and are in condition for allowance.

Claim 7 has been amended to clarify that the central portion of the headplate assembly rests or bears upon the horse when the headplate assembly is installed on the horse. Thus, with regard to Claim 7, Dersch does not teach, disclose or claim a device in which the central portion rests on a horse when the device is installed on the horse. Accordingly, it is asserted that Claim 7 and all claims depending therefrom are not anticipated or made obvious by the Dersch reference. Thus, it is asserted that Claim 7 is in condition for allowance.

With regard to independent Claims 17, 38 and 39, Dersch does not describe, teach or claim a device including a plurality of segments that overlap each other where the top segment is the shortest segment and the bottom segment is the longest segment – as such, this element of the present claims is entirely missing from Dersch. As described in more detail above, Dersch specifically teaches that the top layer must be the longest layer. Further, lines 35 to 41 of Dersch teach away from any other configuration by suggesting

that if additional layers are used, they also must be arranged from the longest on the top of the harness to the shortest on the bottom.

In addition, Applicant disagrees that the Dersch harness could be turned upside down (or otherwise inverted or rearranged) and still work for its intended purpose. First, if Dersch was turned upside down, the metal stiffener would contact the horse – a configuration specifically taught against in Dersch (Col. 2, lines 55-63).

Next, as described in more detail above, the center portion of Dersch does not rest or bear upon the horse, and thus, each of the ends of the two layers must rest against/contact the horse, with the longer layer forcing the ends of the shorter layer towards the horse such that the ends are able to bear the weight of the harness and keep it in position. If the Dersch harness was turned inside out, because the layers are leather, the Dersch harness would not stay in place on the horse, more specifically, each of the ends of the layers would not contact and/or closely fit the horse, and thus could not bear the weight of the harness. There is simply no disclosure or suggestion in Dersch to form a harness with the shortest layer residing on the top of the harness, as this configuration would render the harness unfit for its intended use.

Accordingly, Applicant believes that Dersch does not disclose or suggest a headplate assembly wherein the shortest layer is configured at the top of the headplate assembly and the longest layer is configured at the bottom of the headplate assembly. Because this limitation is totally absent from the Dersch reference, Claims 17, 38 and 39

and those claims depending therefrom are not anticipated by or obvious in light of Dersch. Thus, it is asserted that Claims 17, 38 and 39 are in condition for allowance at this time.

Rejection of Claims 3, 5, 9, 18 and 20

Claims 3, 5, 9, 18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Dersch in view of Nankivell (U.S. 3,712,024). Nankivell discloses a one piece plastic saddle tree that is injection molded and completely unitary in construction except for the addition of a metal saddle horn. As described, the Nankivell saddle tree is substantially inflexible in construction.

There is simply no motivation, teaching or suggestion in either Dersch or Nankivell to combine the two references. Dersch discloses a driving harness, with a center portion that does not bear weight or rest upon a horse when properly installed. On the other hand, Nankivell discloses a unitary saddle tree, which includes a front jockey 14 and pommel portion intended to rest on the horse when installed. Indeed, a properly fitting saddle includes a pommel (a center portion) that rests directly on the horse behind its shoulders, and points (the ends of the legs of the pommel portion) that run parallel to and do not contact the horse's withers. Because the Nankivell tree is substantially inflexible, if the ends were to contact the horse's withers, it would be uncomfortable and/or injure the horse. In addition, Dersch teaches layer of leather having a rigid center

portion and pliable ends. However, Nankivell teaches only plastic injection molding to achieve a substantially rigid saddle tree. One skilled in the art would simply not substitute the driving harness, or the materials of construction thereof, of Dersch into the saddle tree of Nankivell or vice versa. Dersch and Nankivell represent two completely different constructions serving completely distinct functions. As such, there is no suggestion, motivation or reason for one skilled in the art to combine these two references.

Nonetheless, Claims 3 and 5 depend from Claim 1, Claim 9 depends from Claim 7 and Claims 18 and 20 depend from Claim 17. It is submitted that Claims 1, 7 and 17 are not anticipated by or obvious in light of Dersch for the reasons stated above. The teachings of Nankivell do not suggest or teach modification of Dersch that would anticipate claims or make obvious Claims 1, 7 or 17. Therefore, Applicant asserts that Claims 3, 5, 9, 18 and 20 are not obvious in view of Dersch and/or Nankivell and are thus patentable thereover.

Rejection of Claim 10

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dersch. As stated in more detail above, Dersch does not teach or suggest modification of the disclosed harness that would include layers constructed from metal or an alloy material. Such materials do not exhibit the physical properties or pliability required by

the Dersch patent. Specifically, the ends of the Dersch layers are intended to rest against the horse, as such, the thinned, pliable ends of the leather layers do not hurt the horse during use; however, if the layers were constructed of metal, they would not exhibit the pliability required and the ends would uncomfortably rub/cut against the horse. One skilled in the art would simply not substitute the leather in Dersch with a metal material.

Nonetheless, Claim 10 depends from Claim 7. For the reasons stated above, Claims 7 is not anticipated by or obvious in light of Dersch. Therefore, Applicant asserts that Claim 7 is not obvious in view of Dersch and is thus patentable thereover.

In summary, Claims 1 through 39 are believed to be allowable for the reasons given herein. Accordingly, these claims remain pending following entry of this Amendment, and are believed to be in condition for allowance at this time. As such, Applicant respectfully requests entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited.

Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicant's undersigned representative at the number listed below.

Respectfully submitted:

BY Antonia M. Holland
Antonia M. Holland
Attorney for Applicant
Registration No. 53,840

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202
(414) 298-8285
Customer No. 22922